

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 18, 2007

**STATE OF TENNESSEE v. CHARLES SANDERSON**

**Direct Appeal from the Circuit Court for Maury County**  
**No. 13690     Jim T. Hamilton, Judge**

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**No. M2007-00387-CCA-R3-CD - Filed March 7, 2008**

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The defendant, Charles Sanderson, was convicted of first degree premeditated murder and sentenced to life without the possibility of parole. On appeal, he challenges the trial court's rulings on several evidentiary issues and argues that there was insufficient evidence to support his conviction. Following our review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ALAN E. GLENN, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and D. KELLY THOMAS, JR., JJ., joined.

Hershell D. Koger, Pulaski, Tennessee (at trial and on appeal); William Eledge, Lawrenceburg, Tennessee (at trial), for the appellant, Charles Sanderson.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth B. Marney, Assistant Attorney General; Mike Bottoms, District Attorney General; and Robert C. Sanders, Joseph L. Penrod, and Joel Douglas Dicus, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**FACTS**

**State's Proof**

Around 8:30 p.m. on July 11, 2001, Tom Harris, an inmate at the South Central Correctional Facility (South Central) in Clifton, Wayne County, Tennessee, was found dead in his cell.<sup>1</sup> That night, shift supervisor Dan Devers received a call from a sergeant requesting that he summon

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<sup>1</sup> Prior to trial, the Wayne County Circuit Court ordered that venue be changed to Maury County.

medical assistance and proceed to Apollo B pod.<sup>2</sup> When Devers arrived, he walked to cell 201 and observed the victim lying on the floor on his stomach, with a sock tied in a knot around his neck. Shortly thereafter, prison medical personnel arrived, removed the sock from the victim's neck, and began resuscitation attempts. Devers noticed that the victim's head was very blue, but his body below the neck lacked color. The victim did not respond to resuscitation efforts. During the ensuing investigation, Devers ordered each of the 63 other cells in Apollo B pod to be searched.

Devers testified that each cell in Apollo B pod housed two inmates and had an individual door lock. Inmates could obtain keys to their own cells which permitted free ingress and egress except during lockdown periods. Devers said that at 8:15 p.m. each evening, the recreation period ended and all inmates were required to return to their pods. When it was announced that recreation was over, the correctional officer assigned to each pod was required to open and remain in physical control of the pod door until all inmates returned. Devers said a correctional officer standing at the entry door to Apollo B pod would be unable to see cell 201.

Jeremy Means, the correctional officer assigned to Apollo B pod on July 11, 2001, testified that inmates Tom Harris and Robert Craig were assigned to cell 201 at that time. Means went to cell 201 sometime between 6:00 and 7:00 p.m. that night to deliver a paper to Craig, who was not present. Harris was inside the cell and "seemed fine," and Means did not notice anything suggesting that an altercation had taken place. At 8:15 p.m. Means announced that recreation was over. After all the inmates returned to Apollo B pod, he wrote entries in his log book until Craig called to him, asking to be let into his cell. Means instructed Craig to wait, but Craig persisted, eventually telling Means "[t]here is something wrong with my [cellmate]." Means ran upstairs to cell 201 and looked in the window, observing that the lights were off. He opened the door, turned the lights on, and discovered the victim lying face down with a sock around his neck. He radioed for help and secured the cell. On cross-examination, Means testified that he helped conduct the cell searches ordered after the victim's body was discovered. He recalled finding pants with what appeared to be bloodstains hanging on a railing on the second floor of the pod, in front of cell 230.

Robert Craig testified that his first night in Apollo B pod was July 10, 2001, and that he was assigned to cell 201. Because he was new to the pod, he did not yet have a key to his cell, so the victim put a piece of cardboard in the door to prevent it from latching and thus to allow Craig to enter freely. Craig testified that he saw the victim from 3:45 p.m. to 5:00 p.m. on July 11 when both were locked in the cell for a scheduled count. At that time, the victim did not appear to have been in an altercation and did not complain to Craig of any trouble. After the count, Craig left to play basketball and returned to the pod between 7:45 and 8:00 p.m. He played cards in the common area for approximately thirty minutes and then made a phone call before returning to his cell. He noticed that the door was locked and the lights were off. He could see the victim lying on the floor but did not initially believe anything was wrong. He summoned another inmate and told him that the victim had fallen asleep in the floor. The other inmate looked inside the cell and told Craig that the victim was dead. Craig knocked on the door of the cell but received no response.

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<sup>2</sup> A pod is a housing unit at South Central consisting of 64 cells.

Rudolph Slagle, Jr., the medical shift supervisor at South Central, responded to the call for medical assistance at Apollo B pod and found the victim face down in his cell, with blood around his mouth. He removed the sock from the victim's neck and began CPR. The victim was moved to the medical department at South Central where further resuscitation attempts were unsuccessful.

Douglas Ford, an inmate in cell 217 of Apollo B pod, testified that his cell was "[b]asically straight across" from cell 201. After recreation ended at 8:15 p.m., he left his room and stood outside cells 222 and 223, talking to fellow inmates. A few minutes later, he noticed the defendant and another inmate named Joel exit cell 201. He found this unusual because the victim did not associate with either of these inmates. Both men walked toward Ford, descended the stairway closest to him, and then entered cell 120, which was Joel's cell.

Dr. Charles Harlan, accepted by the trial court as an expert in the fields of anatomic, clinical, and forensic pathology, performed an autopsy on the victim and determined his cause of death to be ligature strangulation. Dr. Harlan testified that the minimum amount of time required to bring about death in this manner is thirty seconds. He stated that toxicology screens performed on fluids derived from the victim's body were negative for the presence of alcohol and illicit drugs and positive for naproxen (Aleve).

Daniel Paullin testified that on July 11, 2001, he was an inmate at South Central housed in the cell adjacent to the victim's cell. He was in his cell on the evening of July 11 when he heard a loud thump on the wall, followed by one on the floor, between 8:10 and 8:15 p.m. Paullin said that he did not hear any screaming or yelling coming from the victim's cell.

Chris Sawyer, a correctional officer at South Central, searched cell 120 during the lockdown following the victim's death. He recovered a pair of pants which appeared to be stained with blood and gave them to his sergeant.

Sergeant Olmo Rodriguez testified that he supervised the teams who searched the cells of Apollo B pod on July 11, 2001. He received the pants Officer Sawyer found in cell 120 and turned them over to the Tennessee Bureau of Investigation (TBI). On cross-examination, Sergeant Rodriguez testified that, following his review of an incident report compiled by Devers, clothing items containing apparent bloodstains also were found in cells 104, 118, 122, and 224.

Jeffrey Hubbard testified that on July 11, 2001, he was housed in cell 120 of Apollo B pod with Joel Schmeiderer. Hubbard said that he was in and out of his cell several times that day and that each time he returned to his cell, the defendant was there with Schmeiderer. Hubbard said that whenever he entered the cell, Schmeiderer and the defendant ceased their activity and conversation. A pair of blue jeans belonging to Schmeiderer was retrieved from his cell during the search conducted by correctional officers.

On cross-examination, Hubbard testified that he spent only a brief amount of time in his cell that day and did not know what the defendant did the rest of the day. During the lockdown following

the discovery of the victim's body, Hubbard saw Schneiderer tear a section out of his shirt, wipe his shoes with it, and flush it down the toilet. Schneiderer placed the rest of the shirt in a bag and hid it.

TBI Agent Vance Jack led the investigation of the victim's death. He identified several photographs and items of physical evidence collected during his investigation and testified that he observed a bite mark on the defendant's hand the morning after the victim's death. On cross-examination, Agent Jack said that the defendant's cell did not contain blood or any property of the victim. He testified that an inmate from cell 224 of Apollo B pod had abrasions on his back at the time of the investigation.

TBI Agent Charles Hardy, accepted by the trial court as an expert in the fields of serology and DNA analysis, testified that samples of blood taken from the door handle of cell 201 and a towel and television inside the cell contained a DNA profile matching that of the defendant. He stated that a swab taken from the left hand of the victim contained the DNA of both the victim and the defendant and that a pair of pants found in cell 120 contained the victim's DNA in a bloodstain on the knee, and the defendant's DNA in a bloodstain on the cuff. Agent Hardy found the DNA of both the victim and the defendant in bloodstains on the sock which had been wrapped around the victim's neck.

On cross-examination, Agent Hardy testified that clothing gathered from the defendant during the investigation, including a white T-shirt, gray sweatpants, white boxers, and blue flip-flops, tested negative for the presence of blood. He said that a bloodstain on a blue shirt taken from cell 120 contained DNA from the victim but not the defendant. Similarly, he found that a T-shirt from Schneiderer contained the DNA of the victim but not the defendant.

### **Defense Proof**

Joel Schneiderer, who along with the defendant was accused of the murder of the victim, was called by the defense to testify regarding statements he made to Jeffrey Hubbard and another inmate, Randy Bone. However, he declined to testify, invoking his Fifth Amendment privilege against self-incrimination.

Jason Aires, a correctional officer at South Central, testified that he found bloody pants and a bloody T-shirt in cell 224 during the searches following the victim's death. He also found a pair of pants with bloodstains in cell 118.

Andrew Jason Caldwell, a yard officer at South Central, testified that during the cell searches he found a T-shirt in cell 102 and pairs of pants in cells 104 and 230 which contained apparent bloodstains.

Correctional Officer Kevin Crowe testified that he found shirts in cells 122 and 224 and pants in cells 104 and 118 with apparent bloodstains.

Keith Jackson, an inmate at South Central, testified that he was housed in Apollo B pod on July 11, 2001. That day, Schneiderer bumped into him on the stairs sometime after dinner. He could not recall if anyone was with Schneiderer at the time.

Ron Lax, a private investigator, testified that he interviewed Jackson on the defendant's behalf and that Jackson told him that the inmate he saw descending the stairs with Schneiderer was young and skinny. Lax said that Jackson characterized the defendant as "fat." He said he also interviewed Douglas Ford, who told him that the victim had a "nasty mouth and he would be the type to smart off to someone."

Ramon McGowan, an inmate at South Central, testified that at some time prior to lockdown he was walking on the railway on the second floor of Apollo B pod when he encountered five to six inmates standing outside the victim's cell. The inmates were conversing but ceased as McGowan approached. McGowan could not see inside the victim's cell as he passed by because an inmate had his back to the door. He testified that the defendant was not in the group standing outside the victim's cell.

Patrick Coffey, a private investigator accepted by the court as an expert in blood spatter interpretation, testified that, based upon his examination of the evidence, the sock placed around the victim's neck appeared to have been discarded onto a box and the floor of the cell, both of which contained blood. He stated that this could result in blood transferring from the box and the floor to the sock. On cross-examination, Coffey acknowledged that he had neither visited the crime scene nor examined the physical evidence prior to trial.

Retired TBI Agent William Coleman, accepted by the court as an expert in the field of criminal investigations, testified that there are national standards for homicide investigations, including protocols for interviewing witnesses and examining, photographing, and sketching the crime scene. He opined that investigators in the present case did not properly sketch and seal the crime scene or preserve the evidence. Specifically, he testified that a correctional officer contaminated the sock found around the victim's neck by dragging it through a box on the floor of the cell. On cross-examination, Coleman acknowledged that there was blood on the sock before it contacted the box and declined to dispute Hardy's finding that the defendant's blood was on the sock.

The defendant testified that on July 11, 2001, he encountered the victim in the sally port of Apollo B pod, through which inmates passed to go to the dining hall. The victim bumped into the defendant, and the defendant asked the victim to apologize. The victim refused, uttering an obscenity at the defendant. The defendant then decided to "rough [the victim] up a little bit" because he had been disrespectful, but he did not do so at that time because correctional officers were present. He ate dinner, went to the ball field, returned to Apollo B pod at around 7:30 p.m., and showered. The defendant then decided to go to the victim's cell; while en route he encountered Schneiderer, who asked where he was going. When the defendant informed him, Schneiderer volunteered to accompany him and serve as a lookout. When they arrived at the victim's cell, the

defendant entered alone and shut the door behind him. The defendant pointed his finger in the face of the victim, who responded by biting the defendant's finger. The defendant grabbed the victim's nose and pulled back, which caused the victim to cease biting the defendant. The defendant next hit the victim in the mouth and knocked him against a wall. He then hit the victim "a couple of more times" in the face. The defendant wiped his hands on a towel, informed the victim "that was the end of that," and walked out of the cell, closing the door behind him. He testified that the victim was alive when he departed the cell.

On cross-examination, the defendant said he went to the victim's cell around 8:05 p.m. He was aware that when the correctional officer went to guard the entrance door to the pod when recreation ended at 8:15 p.m., the officer could not see the victim's cell; however, he denied that he timed his confrontation with the victim to correspond with the end of recreation. He denied spending most of the day in Schneiderer's cell. He testified that when he approached the victim's cell, the door was propped open with a piece of cardboard which fell to the floor when he opened the door. He did not replace the cardboard when he left the cell, closing the door until it latched. The defendant said he could not explain why his blood was found on Schneiderer's pants or the sock used to strangle the victim.

Billy Albert, the defendant's cellmate on July 11, 2001, testified that the defendant entered their cell around 7:30 p.m. that day and appeared "just a little irritated." The defendant told Albert that someone had been "talking crazy to him" and that he was going to "straighten it." The defendant left and returned ten to fifteen minutes later, in pain from a cut on his finger.

Following deliberations, the jury convicted the defendant of first degree murder, and he was sentenced to life without the possibility of parole.

## **ANALYSIS**

On appeal, the defendant challenges three evidentiary rulings made by the trial court. He argues that the trial court erred (1) in refusing to permit Devers to introduce the incident report listing the items found in the cells of Apollo B pod during the searches following the victim's death; (2) in refusing to permit Patrick Looper, a defensive tactics instructor, to testify regarding general principles of strangulation and self-defense; and (3) in refusing to permit Randy Bone to testify regarding conversations he had with Schneiderer. He also attacks the sufficiency of the evidence supporting his conviction. The State responds that the trial court's evidentiary rulings were correct, and the evidence is sufficient to support the defendant's conviction. As we will explain, we agree with the State.

### **I. Evidentiary Rulings**

The admission of evidence generally lies within the sound discretion of the trial court and will not be reversed on appeal absent a showing of an abuse of discretion. See State v. Gilliland, 22

S.W.3d 266, 270 (Tenn. 2000); State v. Edison, 9 S.W.3d 75, 77 (Tenn. 1999); State v. Cauthern, 967 S.W.2d 726, 743 (Tenn. 1998). As our supreme court has explained:

Because the term “discretion” essentially “denotes the absence of a hard and fast rule,” we will reverse a decision to admit evidence “only when the ‘court applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.’”

Gilliland, 22 S.W.3d at 270 (quoting State v. Shirley, 6 S.W.3d 243, 247 (Tenn. 1999)).

#### **A. Devers’ Testimony**

The defendant argues that Devers, the shift supervisor at South Central, should have been permitted to read from an incident report generated following the victim’s death, despite his lack of personal knowledge regarding its contents, because, in the defendant’s view, the report was admissible as a business record under Tennessee Rule of Evidence 803(6). After a jury-out offer of proof, the trial court declined to allow Devers to testify as to the contents of the report, and defense counsel submitted the report as a proffer of proof.

Rule 803(6) provides an exception to the hearsay rule for:

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses made at or near the time by or from information transmitted by a person with knowledge and a business duty to record or transmit if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness . . . unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

“In order to have sufficient indicia of trustworthiness to qualify as a business record under Rule 803(6), the record must have been made in the ‘regular practice of that business activity,’ and it must have been ‘kept in the course of a regularly conducted business activity.’” State v. Dean, 76 S.W.3d 352, 365 (Tenn. Crim. App. 2001) (quoting Neil P. Cohen et al., Tennessee Law of Evidence, § 8.11 [6] (4<sup>th</sup> ed. 2000)).

We need not determine whether the trial court abused its discretion in excluding Devers’ testimony regarding the incident report because any error unquestionably was harmless, as we will explain. The report states that items with apparent bloodstains were found in cells 104, 118, 122, and 224. The record reflects that the trial court later permitted Sergeant Rodriguez to testify, after reviewing the report, that items with bloodstains were found in those four rooms. The report was received into evidence as Exhibit 17. Thus, even if the trial court erred in not allowing Devers to

read from the report, information from the report came in later in the trial through Sergeant Rodriguez. This assignment is without merit.

### **B. Looper's Testimony**

The defendant next challenges the trial court's ruling that the testimony of Patrick Looper, a defensive tactics instructor, was irrelevant. Defense counsel conducted a jury-out examination of Looper, who testified that a person being strangled from behind would first attempt to open an airway and, if unsuccessful, would attempt to break the hold. Looper said strangulation attacks generally come from behind, because 85% of the human body's muscles are designed to work in forward motion between the shoulders. He testified that, when teaching police officers to defend themselves, he instructed them to avoid standing directly in front of a subject and instead to stand behind or to the rear quarter of the subject.

In refusing to allow Looper's testimony, the trial court stated, "I still fail to see any relevancy at all . . . . [A]ll I have heard is something about police officers and how they are trained and how they should and should not affect [sic] an arrest. I don't see that it is relevant to this case in any way, shape, form, or fashion."

Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. Generally, relevant evidence is admissible and irrelevant evidence is inadmissible. Tenn. R. Evid. 402.

On appeal, the defendant argues:

The purpose of the proffered testimony was to demonstrate that the automatic reflex of someone who is being choked is to attempt to clear the airway, that that would allow the argument that the victim would have typically reacted in that fashion. That when he was strangled with the sock, his reflex would have been to attempt to clear the airway. Also, the proffered testimony showed that it was [sic] much more difficult for a person to have strangled the victim from the front, as opposed to being behind the victim – and that the 85/15 percent body strength testimony would support the defense theory that it only took a single person to kill the victim, strangling the victim from behind – as opposed to the State's theory that it took two persons to strangle the victim – the [defendant] and his co-defendant Schneider.

We conclude that the trial court did not abuse its discretion by excluding Looper's testimony as irrelevant. The manner in which the victim reacted to being strangled was not in controversy. Similarly, whether the victim was strangled from the front or the rear was immaterial to the determination of the defendant's guilt or innocence. Regarding the number of assailants, we note that the defendant offers no citation to the record for the proposition that the State's theory at trial



was that two people attacked the victim. In any event, testimony regarding the concentration of strength in the human body does not make it more probable that only one person attacked the victim. General testimony that a person *may* be strangled from behind by a sole assailant is insufficient, standing alone, to permit an inference that only a single assailant was present in this particular case. Furthermore, none of the proffered evidence suggests that the purported sole assailant was not the defendant. This assignment is without merit.

### **C. Bone's Testimony**

The defendant argues that the trial court erred in excluding Randy Bone's testimony regarding exculpatory statements Joel Schmeiderer made to him. During several conversations which took place at Brushy Mountain Correctional Complex and en route to the defendant's trial, Schmeiderer allegedly told Bone that he killed the victim without assistance from the defendant. The defendant contends that the statements were admissible as an exception to the hearsay rule because Schmeiderer was constitutionally unavailable, and the statements were against his penal interest. He also asserts that this evidentiary ruling violated his due process rights to present a defense and call witnesses. He argues that because the statements were critical to his defense and bore sufficient indicia of reliability, his right to due process of law compelled the admission of the statements, the Tennessee Rules of Evidence notwithstanding. After setting out the relevant statements, we will address each claim in turn.

During a jury-out offer of proof, Randy Bone testified that he spoke with Schmeiderer in the recreational yard when both were housed at Brushy Mountain Correctional Complex. He said Schmeiderer told him that the defendant was not involved in the victim's murder and had "got caught up in the mix." In later conversations, Schmeiderer told Bone that he had killed the victim on orders from his cellmate and would eventually tell the truth and make sure the defendant did not go to trial. Bone said he spoke with Schmeiderer again while both were being transported from prison to the courthouse to testify at the defendant's trial. On this occasion, Schmeiderer told Bone to "go back tomorrow and tell them I strangled the mother-fucker." Schmeiderer told Bone that he came close to telling the truth when he was called to testify at trial, but did not do so because he was worried the State would seek the death penalty against him.

The trial court found that Schmeiderer was unavailable because he invoked his Fifth Amendment privilege against self-incrimination. The court then ruled that Schmeiderer's self-inculpatory statements to Bone were admissible as statements against interest but that his exculpatory statements about the defendant were inadmissible. The defense did not call Bone to testify before the jury.

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#### **1. Statement against Interest**

A statement which at the time of its making so far tended to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the statement unless believing it to be true is admissible if the declarant is unavailable as a witness. Tenn. R. Evid.

804(b)(3). A declarant is unavailable when, *inter alia*, exempted by ruling of the court on the grounds of privilege from testifying concerning the subject matter of the declarant's statement. Tenn. R. Evid. 804(a)(1).

The trial court correctly distinguished between Schneiderer's self-inculpatory statements and his statements exculpating the defendant. Schneiderer was unavailable as a witness, and the statements he made to Bone acknowledging his involvement in the victim's death were admissible under the statement against interest exception. However, Schneiderer's exculpatory statements about the defendant fall outside the scope of the exception, because they did not subject Schneiderer to criminal liability. See State v. King, 694 S.W.2d 941, 945 (Tenn. 1985) (statements by codefendants which tend to corroborate the defendant's version of the facts but do not inculcate the codefendant are not admissible under the statement against interest exception). We conclude that the trial court did not abuse its discretion in making these rulings.

## **2. Due Process**

The defendant argues that the exclusion of the exculpatory statements violated his right to due process of law and that this right trumps the application of the Tennessee Rules of Evidence. The due process clauses of the Sixth and Fourteenth Amendments of the United States Constitution guarantee a criminal defendant the right to present a defense and call favorable witnesses. State v. Brown, 29 S.W.3d 427, 432 (Tenn. 2000). However, this right is not absolute, and the accused must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt or innocence. "Such rules do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'" Id. (citations omitted). The facts of each case must be scrutinized to determine whether the constitutional right to present evidence has been violated by the exclusion of evidence. A reviewing court must consider whether (1) the excluded evidence is critical to the defense; (2) the evidence bears sufficient indicia of reliability; and (3) the interest supporting the exclusion of the evidence is substantially important. Id. at 433-34.

Applying these factors, we first conclude that the excluded evidence was critical to the defense. Schneiderer's statements cast doubt on whether the defendant strangled the victim. However, the statements bear little indicia of reliability. They are uncorroborated statements of a fellow inmate and are contradicted by another statement made by Schneiderer to Agent Jack, in which he implicated the defendant in the attack on the victim.<sup>3</sup> The third factor is closely related to the second and also weighs against the defendant. The hearsay rule serves an important interest in excluding testimony that is untrustworthy. State v. Flood, 219 S.W.3d 307, 319 (Tenn. 2007). "Out-of-court statements are traditionally excluded because they lack the conventional indicia of reliability: they are usually not made under oath or other circumstances that impress the speaker with the solemnity of his statements; the declarant's word is not subject to cross-examination; and he is

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<sup>3</sup>The trial court ruled that the statement from Schneiderer to Jack was admissible as a statement against interest. However, because the defense chose not to present Bone's testimony to the jury, the State did not recall Agent Jack.

not available in order that his demeanor and credibility may be assessed by the jury.” Chambers v. Mississippi, 410 U.S. 284, 298, 93 S.Ct. 1038, 1047 (1973). Balancing these three factors, we conclude that, although the statements were critical to the defense, the defendant’s right to due process of law was not violated by their exclusion because the statements were insufficiently reliable, and the governmental interest supporting their exclusion was substantially important.

## **II. Sufficiency of the Evidence**

The defendant also attacks the sufficiency of the evidence supporting his conviction and argues that, in conducting our review, we should consider Bone’s testimony, which was excluded by the trial court.

Where sufficiency of the convicting evidence is challenged, the relevant question for the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *see also* Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992).

All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See* State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)).

A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. *See* State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The defendant was convicted of first degree premeditated murder. First degree murder is defined as the “premeditated and intentional killing of another.” Tenn. Code Ann. § 39-13-202(a)(1) (2006). “[P]remeditation’ is an act done after the exercise of reflection and judgment” and “means that the intent to kill must have been formed prior to the act itself.” Id. § 39-13-202(d). “‘Intentional’ means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.” Id. § 39-11-106(a)(18).

Initially, we disagree with the defendant that it is appropriate to consider Bone’s proffered testimony, which was never introduced to the jury, when reviewing the sufficiency of the evidence. Our task is to review whether, given the evidence before it, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. Already, we have concluded that the trial court did not err in excluding this evidence; and there is no legal basis for our speculating as to the impact of this evidence were it admissible.

Viewing the evidence in the light most favorable to the State, the proof at trial showed that the defendant and the victim had an altercation in the sally port of Apollo B pod on their way to dinner on July 11, 2001. Jeffrey Hubbard, Schneiderer’s cellmate, testified that he saw the defendant and Schneiderer together in his cell at least five to six times during the day. Later that evening, after recreation was over, the defendant and Schneiderer were seen leaving the victim’s cell. Daniel Paullin, who was housed in the cell adjacent to the victim, heard two loud thumps around 8:15 that evening. The victim was discovered strangled to death by a sock tied around his neck, which contained the blood of the defendant. The defendant’s DNA was also found in bloodstains on the door handle of the victim’s cell and a towel and a television inside the cell. A swab taken from the victim’s left hand contained the defendant’s DNA, and a pair of pants recovered from Schneiderer’s room contained the DNA of both the victim and the defendant. The door to the victim’s cell was propped open when the defendant entered. The defendant acknowledged attacking the victim and closing the door until it latched when he left the victim’s cell. No one else besides the correctional officer on duty had a key to the victim’s cell. This proof was sufficient for the jury to find the defendant guilty of first degree murder.

### **CONCLUSION**

Based upon the foregoing authorities and reasoning, the judgment of the trial court is affirmed.

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ALAN E. GLENN, JUDGE